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June 24, 2019

VIA ECF

The Honorable Margo K. Brodie
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Courtroom 6F
Brooklyn, NY 11201

Magistrate Judge James Orenstein
United States District Court
for the Eastern District of New York
225 Cadman Plaza East
Room 1227 South
Brooklyn, NY 11201

Re: *In re Payment Card Interchange Fee and Merchant Discount Antitrust Litigation*,
No. 1:05-MD-1720-(MKB)(JO)

Dear Judges Brodie and Orenstein:

We write to alert the Court to misleading statements being made by a third-party claims filing entity and to seek the Court's assistance in halting the conduct and fixing any damage that may have been done.

On June 17, 2019, we were alerted by Epiq that a class member reported a solicitation which directed them to the website paymentcardhelp.com. Bernay Decl., ¶2. Immediately after hearing from Epiq, Class Counsel began looking into the site (which is also referred to as "Business Refunds of America"). *Id.* We discovered numerous false and misleading statements were being made on the website and in a video available both on the website and on social media. *Id.* Our efforts to fully resolve this matter without Court intervention have failed as the entity and those persons we believe associated with the entity have been difficult to contact, despite several calls, faxes, use of a web contact form and overnight mailings. *Id.*, ¶¶3-5; *see also* Bernay Decl., Ex. F (June 18, 2019 letter from Alexandra S. Bernay to Jason Baril).

The lawyer running the entity surfaced once, briefly, via email and claimed to have deactivated the suspect website and Facebook page, but the Facebook page, which prominently features a false and misleading video that has been viewed more than 1,600 times, remains available online. *Id.*, ¶6. Twitter posts are also still available, featuring misleading content, including the same misleading video.¹ Moreover, the entity's owner has not responded to requests for additional information, including information on the number of class members who may have signed up for services based on the false and misleading information. *Id.*

¹ We took steps to copy and preserve the materials on the site, and attempted to contact the law firm and lawyer who appears to be associated with the site. Attached as exhibits to the Declaration of Alexandra S. Bernay are pages from the website, which now appears to be inactive, as well as the Facebook page and Twitter postings as well as a transcript of the content in the "news" video. *See* Bernay Decl., Exhibits A-D. The Declaration also details efforts to contact the entity.

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“News” Video

There is a video² that was prominently displayed on the paymentcardhelp.com home page and which remains available on Facebook and Twitter, that while purporting to be a “live” breaking news piece, is an ad that contains a number of errors regarding the proposed settlement. As we explained in a June 18, 2019 letter to Mr. Baril (Bernay Decl., Ex. F), the false breaking-news advertisement might be a source of confusion to class members generally because it is not actually news. Next, it is not true that “Business Refunds of America is helping businesses across America fill out their claims forms” and trying “to maximize their settlement against these two corporations.” There are no claims forms available and there will not be any claims forms unless and until the Court grants final approval to the settlement. Third, the fake breaking-news report seems to imply that Mr. Baril has something to do with the case. “BRA is founded by an attorney who has spent 15 years fighting the government and insurance companies, and knows what it takes to get people or businesses what they deserve from corporate giants.” The “founder, Jason Baril, says this is another opportunity to help the little guy against the big guy.” The false and misleading news piece also stated that it is “great to see someone like Jason with the courage to stand up to these corporations” and that “[w]e need more of these kind of lawyers and groups to help level the playing field.” It is not the case that Mr. Baril has anything to do with the litigation or settlement. We also explained that we are concerned that there is a false sense of urgency being created. The video urges class members: “don’t wait” and to “act now before time runs out.” As there is no claim form available to class members, the exhortation to act now before time runs out is misleading.

Other Problems with the Website

We note that the entity must be somewhat familiar with the litigation and the Court’s orders regarding third parties and needed disclaimers, because some of the required information appeared on the site. However, Class Counsel is concerned that the disclaimers may not appear on the contracts or in other solicitations, as required by the Court. Also, we noted that the website has copied verbatim many of the materials on the official Court-approved website, including referring to itself as a source for case documents. This can cause confusion to class members who may believe they are on the official website and not a commercial enterprise.

More problems appeared on the sign-up page. There they stated that they use “automated software to assist with the claim filing process” which appears to again wrongly imply that there is a claims filing process available currently to class members. The site also stated, “We cannot move forward with your claim until these steps are completed. Once completed we will move

² A copy of the video has been submitted on a CD-ROM to the Court.

**Robbins Geller
Rudman & Dowd LLP**

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forward with your merchant service claim against Visa and Mastercard.” This is misleading. There is no “merchant service claim” that currently exists. Finally, they again mention “time restrictions” that “may apply to any payment so file your claim now before it’s too late!” This is false and misleading as there is not a current claims filing deadline.

We stated in the letter that the company would need to immediately remove the false and misleading information or that counsel would seek an order to show cause as to why the business should not be held in violation of the Court’s prior orders regarding third-party claims filing companies.

The Court Has the Power to Grant the Requested Relief

On September 26, 2018, following the Rule 23(b)(3) Plaintiffs’ motion for preliminary approval, the Court entered an order holding that all claims filing companies wishing to represent merchants are required to include certain information in solicitations or they may be found to be “misleading and following notice and an opportunity to cure, those entities may be enjoined permanently from taking any role in the settlement.” ECF No. 7260. The Court has expressed concerns regarding potential class member confusion for years and has issued numerous orders to protect the class members under its power through the All Writs Act as well as under Rule 23.

Conclusion

Because the Court has the power to protect class members from false and misleading solicitations, Class Counsel respectfully requests the Court issue an Order to Show Cause as to why Business Refunds of America and its “founder” Jason Baril not be ordered to remove all false and misleading materials from its website, Facebook and Twitter accounts and provide class members the opportunity to rescind any contracts that may have been entered into based on misleading information. Should the Court wish to hold a hearing on this matter, we respectfully request it be held in conjunction with the already-scheduled July 9, 2019 conference.

Respectfully submitted,

/s/ K. Craig Wildfang
K. Craig Wildfang
Thomas J. Undlin
Robins Kaplan LLP

/s/ H. Laddie Montague, Jr.
H. Laddie Montague, Jr.
Merrill G. Davidoff
Berger Montague PC

/s/ Alexandra S. Bernay
Patrick J. Coughlin
Alexandra S. Bernay
**Robbins Geller Rudman
& Dowd LLP**

cc: All Counsel via ECF